THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Arbitration Application No. 14 of 2006 (S/J)
(Under Section 11(6) of the Arbitration and Conciliation Act, 1996)

M/S Dwarika Projects Pvt. Limited through its Director Sri B.S. Verma and having its Corporate Office at B-7, Sector-36 Noida (U.P.).

…… Applicant.

Versus

1. The Chief Engineer (Level-I), Uttaranchal Public Works Department Dehradun.
2. The Chief Engineer Kumaon Kshetra Public Works Department (P.W.D.) Almora.
3. The Superintending Engineer, 53rd Circle, Public Works Department (P.W.D.) Haldwain, District Nainital.
4. Executive Engineer, Construction Division, Public Works Department (P.W.D.) Kashipur, District Udham Singh Nagar.

… Respondents.

Sri Jitendra Chaudhary, learned counsel for the applicant.
Sri Nand Prasad, learned Standing Counsel for the respondents.

Dated March 19, 2007
Hon'ble B.S.Verma, J.

The applicant M/s Dwarika Projects Pvt. Limited has filed the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (***for short the Act***) for appointment of Arbitrator.

According to the applicant the applicant is a Private Limited Company registered under the Companies Act having its Corporate Office at Noida and the company is engaged in various construction activities with the respondents. It has been alleged that initially the company was registered as a partnership firm in the name and style M/s Raj & Associates Construction Division, but in the year 2005, it became a Private Limited Company. It has been asserted that the tenders were invited from the registered firms/companies in July 2003 by the respondents form B.M. & S.D.B.C. work in Kashipur-Aliganj Road Km. 4 to 8 and Jaspur-Thakurdwara Road Km. 1 to 5 for which the applicant also applied.

The Respondent No.2 vide letter No. 3073/142 C-53/2003 dated 27-8-2003 informed the applicant regarding acceptance of its tender for Rs. 1,27,94,462-20 and the applicant was required to complete all the requirements for executing agreement bond between the parties and the Contract Bond No. 3-EE-530 was executed between the parties on 20-9-2003. The contract bond and G.P.W.-9 are enclosed as Annexure Nos. 2 & 3. In the execution of the contract bond, the applicant company started the job and during the pendency of the contract work, the respondents paid sum of Rs. 76,69,500/- in two instalmnts out of the contract amount till 30-3-2004 and thereafter no amount was paid. The company completed the construction work under the contract as per terms and conditions and the company submitted its bills for payment of remaining 50% amount due against the respondents, but nothing was heard from the respondents despite several reminders. Ultimately, the applicant submitted a representation on 29-10-2005 thereby invoking the arbitration clause as per agreement and requested the respondent-department to nominate the sole arbitrator for resolving the dispute between the parties. Another representation was also sent on 28-11-2005 through courier service to get the dispute resolved by arbitrator, but to no avail. Thereafter, reminders were sent by the applicant on 17-12-2005, 6-3-2006 and 5-5-2006 but the respondents did not take any step to nominate the arbitrator. Hence the applicant has come up before this Court for appointment of arbitrator under Section 11(6) of the Act.

The respondents filed short counter affidavit. They admitted that the contract work in question was assigned to the company vide contract bond no. 3-EE-530 dated 20-9-2003, but contended that despite repeated reminders, the applicant failed to rectify the defects under the contract work done by him. It was stated that the work was not done as per specifications. It was stated that the applicant worked upto 30-3-2004. It was stated that the department suffered huge loss and other difficulties. It was also stated that the matter is liable to be referred to two Arbitrators and

the appointment of arbitrator is to be made by the Chief Engineer, Level-I P.W.D. Uttarakhand.

I have heard learned counsel for the parties and perused the material on record.

Having considered the material on record, it comes out that there is arbitration clause in the agreement bond executed between the two parties. The applicant had made sufficient efforts to invoke the arbitration clause regarding the disputes, but the respondents had taken no decision in the matter. The disputes, as alleged by the petitioner against the P.W.D. Department, are referable for arbitration. Accordingly, the application of the petitioner M/s Dwarika Projects Pvt. Limited deserves to be allowed. The applicant has suggested names of two Officers for being appointed as Arbitrator including one Sri Ram Sharan. a retired Chief Engineer.

In the course of arguments, the learned counsel for both the parties have agreed that Sri Ram Sharan, Retired Chief Engineer, presently residing at B-11, Sector-40, Noida, Uttar Pradesh, may be appointed as Sole Arbitrator to settle the disputes between the parties.

Accordingly, the application of the applicant for appointment of Arbitrator is allowed. Sri Ram Sharan, Chief Engineer (Retd.), R/O B-11, Sector 40, Noida, Uttar Pradesh is appointment as Sole Arbitrator under Section 11(6) of the Act to settle the disputes between the parties in respect of Contractor Bond No. 3-EE 530 dated 29-9-2003. The sole arbitrator shall initiate the arbitral proceedings at an early date after presentation of the certified copy of this order and shall submit his Award in accordance with law as early as possible.

(B.S. Verma, J.)

RCP